

.....ETHICS ISSUES IN PARTNERSHIPS.....

Federal employees must remember that while they may be working alongside partnering individuals and organizations, their first and only loyalty must be to the public's interest. While partnerships may enhance federal programs, employees are still subject to the federal ethics statutes and regulations pertaining to fund-raising, accepting gifts, endorsements, and other considerations. Therefore, as employees expand the use of partnerships, they must be mindful of these restrictions, because partnership authority is not an exception to these criminal and regulatory restrictions.

Most employees are familiar with the ethics regulations known as the Standards of Conduct. A peculiarity in the regulations provides that only employees who file financial disclosure forms are required to receive annual ethics training. The Department has an informal policy of encouraging that all other employees avail themselves of this training as well. The Department's Ethics Office (located within the Solicitor's Office) has experience in answering questions that arise from employees engaging with outside entities to partner in a variety of ways, all with an eye to furthering the Bureaus' and Department's missions. It is critical for employees at all levels to understand that the Department's development of the 4 C's philosophy and management's urging that partnership activities increase in order to further our mission should not be construed to mean that partnership activities must move forward without proper consideration and resolution of ethics questions.

These discussions should include an analysis of potential organizational conflicts of interest. As Federal employees we are all bound to work in accordance with the criminal conflict of interest statutes and the Standards of Conduct regulations. These laws and regulations run to individual employees. However, we are an organization of employees bound to uphold these laws and regulations and therefore when we engage with outside entities to form partnerships, we should be mindful of the potential for tainting the process or bringing into question the agency's impartiality in line with similar analyses that would occur for an individual.

The Department and its Bureaus have many good stories to tell about partnerships that are up and running, as well as about activities that may lead to successful partnerships. However, it is conceivable that a partnership effort may one day be derailed because inadequate attention was paid to the parties' interests or because of an inadvertent (or worst case, intentional) misapplication of the ethics laws and regulations. Employees engaged in partnership activities must have a thorough understanding of the ethics laws and regulations in order to identify potential issues of concern in the development and implementation of the partnership. Everyone at all levels should be able to agree that having a partnership unravel because of ethics concerns would be an embarrassment and unacceptable.

It is essential that employees realize that there may be "gray areas" in any ethics inquiry; the statutes and regulations discussed in this Primer do not always create bright-line tests. By being familiar with these restrictions, employees will be better able to ask the hard questions that must

be asked, anticipate potential problems, and take steps to avoid ethics violations or the appearance of a violation. All employees engaged in these activities should be supported in

identifying ethics issues, seeking resolution to them and thereby creating a stronger partnership. Nothing in the Department's message about the development of partnerships should be construed as a directive to ignore the application of the ethics rules, or to view resolution of ethics questions to be a hindrance to our doing our business.

STATUTORY PROHIBITIONS

18 U.S.C. § 201 - BRIBERY OF PUBLIC OFFICIALS

Generally, this statute prohibits a Government employee from receiving or soliciting anything of value in exchange for being influenced in the performance or non-performance of any official act, including giving testimony, or in exchange for committing any fraud.

18 U.S.C. § 203 - COMPENSATION FOR REPRESENTATIONAL ACTIVITIES

Generally, this statute prohibits a Government employee from receiving or soliciting compensation, for any representational services rendered before a Government agency in connection with a particular matter in which the United States is a party or has an interest.

18 U.S.C. § 205 - REPRESENTATIONAL ACTIVITIES

Generally, this statute prohibits a Government employee from representing anyone else before a court or Government agency in a particular matter in which the United States is a party or has an interest. There is an exception for representing other federal employees in personnel matters. Limited exceptions are allowed only for representation of oneself or one's immediate family (defined as spouse, parents, and children) or of a person or estate for which the employee acts as a fiduciary, but not where the employee has participated officially or has official responsibility. There is also a limited exception for representing non-profit organizations made up primarily of employees or their immediate families.

18 U.S.C. § 208 - CONFLICT OF INTEREST

Generally, this statute prohibits a Government employee from participating personally and substantially in his or her official Government capacity in any "particular matter" in which any of the following has a financial interest:

- The employee
- The employee's spouse
- The employee's minor child

- The employee's general business partner
- Any organization in which the employee is serving as an officer, trustee, partner or employee; or

- Any person or organization with whom the employee is negotiating for non-federal employment.

The statute recognizes limited exceptions to the prohibition for:

- **Written waivers issued by agency after full disclosure of the financial interest (such as when serving in official capacity as an officer in an outside organization)**
- Financial interests exempted by OGE regulation
- Financial interests resulting solely from the interests of the employee or his/her spouse or minor children in birthrights in
 - an Indian allotment held in trust
 - an Indian tribe or band (or other recognized group or community)
 - an Indian claims fund held in trust or administered by the U.S.
 AS LONG AS the particular matter on which the employee works does not specifically involve the allotment, tribe or claims fund. 18 U.S.C. § 208(b) (4).

The assistance of your ethics counselors is necessary in considering any exemption from 18 U.S.C. § 208.

18 U.S.C. § 209 - DUAL COMPENSATION

Generally, this statute prohibits a Government employee from receiving any salary, or any contribution to or supplementation of salary, as compensation for services he or she is expected to perform as an officer in the Executive Branch of the U.S. Government.

WAIVERS

In some cases a waiver may be provided to an employee which allows the employee to retain an interest that would otherwise be prohibited to the employee in a particular position because of a conflict of interest restriction. A waiver may also be issued to allow an interior employee to work on certain matters that would otherwise be prohibited because of conflict of interest laws. A waiver is a form of remedial action and an employee seeking a waiver should contact their servicing ethics counselor to determine whether their situation is one in which a waiver may be considered. After this, the servicing ethics counselor will provide guidance to the employee on how to prepare and where to send the waiver request.

18 U.S.C. § 208(b) WAIVERS

This is a waiver to the statutory prohibition under 18 U.S.C. § 208(a). This law generally prohibits a Government employee from becoming involved in a particular matter when the employee, his/her spouse, minor child or other entities specified in the law has a financial

interest in that matter. It also applies in cases where the organization, in which the employee serves as an employee or officer or is negotiating for future employment, has a financial interest in the particular matter. A § 208(b) waiver allows the employee to become involved in such particular matter. A waiver must be in writing and will be granted only when the Bureau head or the Designated Agency Ethics Official determines that the disqualifying financial interest is not so substantial that it would likely affect the integrity of the employee's services to the Government.

LOBBYING ACTIVITIES

There are a number of statutes that prohibit DOI employees from using appropriated funds to lobby a Member of Congress or other entities other than what is required by the employee's job duties. The general provisions to remember are these:

- An employee may not use appropriate funds to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence a Member of Congress in any manner, on a matter of personal interest.
- An employee is required to refrain from using their official position to further personal views by promoting or opposing legislation relating to programs of the Department.
- Employees acting entirely as private citizens have the right to petition Congress, either individually or collectively, on any subject. An employee's right to petition Congress, a Member of Congress, or to furnish information to either House of Congress, shall not be interfered with or denied as long as the employee does it as a private citizen, on their own time, and with their own supplies or equipment.

Specific statutory lobbying prohibitions affecting official duties are as follows:

- **18 U.S.C. § 219.** Section 219 prohibits employees from acting as an "agent of a foreign principal" as defined under the Foreign Agents Registration Act (FARA) or a "lobbyist" on behalf of a foreign entity that is required to register under the Lobbying Disclosure Act of 1995 (LDA). The LDA ban prohibits certain lobbying of covered legislative and executive branch officials on behalf of foreign corporations, associations, or other organizations. There are certain FARA exceptions related to trade or commerce, legal representation, humanitarian fundraising, and religious, scholastic, or scientific pursuits.
- **18 U.S.C. § 1913.** Section 1913 prohibits employees from using any part of the money appropriated by Congress to influence, in any manner, certain governmental individuals

- and entities to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy or appropriation. The specific individuals and entities who may not be influenced using appropriated funds are:
 - a Member of Congress
 - a jurisdiction
 - an official of any state, local, or territorial government, or
 - an Indian tribe.

This prohibition prevents employees from engaging in grass-roots lobbying campaigns directed at the public, using e-mails, letters or other forms of communication that expressly encourage the public to contact the specified individuals or entities on pending matters of the types identified above. The prohibition does not prevent, however,

- good-faith responses to requests for information;
 - public statements that are strictly factual and devoid of positive or negative sentiment about pending matters; or
 - communications which, if prohibited, would in the opinion of the Attorney General violate the Constitution or interfere with the conduct of foreign policy, counter-intelligence, intelligence or national security activities.
- **Other Anti-lobbying Restrictions:** An annual provision of a government-wide appropriation statute prohibits the use of appropriated funds for publicity or propaganda purposes (such as expenditures for grass-roots lobbying of the public) designed to support or defeat legislation pending before Congress. Also, DOI's annual appropriation statute contains a provision prohibiting employees from engaging in lobbying campaigns or participating in events designed to support or oppose pending legislative goals even where the employee's activities stop short of directly encouraging grass-roots lobbying. These legislative goals may be expressed in pending bills or proposed presidential budgets. As with Section 1913, both of these additional restrictions do not prohibit good-faith responses to requests for information or public statements that are strictly factual and devoid of positive or negative sentiment about pending matters.

REGULATORY LIMITATIONS

ACCEPTING GIFTS

As stated in Executive Order 12674, as a rule Federal employees may not, directly or indirectly, solicit, or accept a gift from: a) a prohibited source; or b) if it is given because of your official position. This rule applies whether the Federal employee is on duty or off duty. A gift may include but is not limited to a gratuity, favor, discount, cash, gift certificate, entertainment,

hospitality, loan, forbearance, or other item of monetary value. It also applies to services as well as gifts of training, transportation, local travel, lodging and meals.

A prohibited source includes any person, company, or organization that:

- Has business with your agency,
- Is seeking to do business with your agency,
- Conducts operations that are regulated by your agency, or
- Has any interest that may be affected by the performance or non-performance of your official duties.

A Prohibited Source may also include:

- Any professional, technical or trade association, the majority of whose members represent prohibited sources; or
- An outside organization which seeks to influence the Department.

Some things are excluded from the definition of a gift, however. The following have been deemed **not** to be gifts:

- Coffee, donuts, or other modest food items not offered as part of a meal;
- Greeting cards, presentational plaques, certificates, or trophies;
- Prizes in contests open to the general public;
- Commercial discounts available to the general public or to all Government employees;
- Commercial loans, pensions, and similar benefits;
- Anything for which you paid market price; or
- Anything paid for by the Government.

Exceptions to the Prohibition:

- Unsolicited Gifts values at \$20 or less (market value), per occasion, from a single prohibited source. However, gifts from any single prohibited source may not exceed \$50 in any given calendar year. **You may not accept cash or other monetary instruments under and circumstances.**
- Waiver of conference fees or acceptance of meals when you are speaking at widely-

- attended gatherings in your official capacity
- Widely attended gatherings. When there has been a determination that your attendance is in the interest of the agency, you may accept an unsolicited gift of free attendance at all or appropriate parts of a widely attended gathering. In such cases, employees must fill out the DI-1958 **prior** to acceptance of attendance. This form must be approved by the appropriate ethics official.
- Discounts and similar benefits that are offered to the public, other groups that you belong to, or to all Government employees
- Gifts based on outside business or employment relationships
- Awards and honorary degrees
- Gifts from a political organization
- Gifts based on a personal relationship

Travel Regulations

ACCEPTANCE OF TRAVEL FROM A NON-FEDERAL SOURCE

As a rule, whenever you are on official travel for the Department, your travel expenses should be paid by the Department or another Federal agency. Occasionally, however, a private sector organization may express its generosity by offering to pay for all or part of the official travel expenses incurred by an employee. When this occurs, the statutory provisions of 13 U.S.C. § 1353 may be used to authorize the Department to accept the employee's travel related expenses. Regulations implementing this statute are contained in 41 CFR § 304-1. In order to use the travel acceptance authority under 31 U.S.C. § 1353, certain conditions and procedures must be satisfied.

Conditions and Procedures

Federal regulations require that the travel authority under 31 U.S.C. § 1353 must be used, where appropriate, before any other travel acceptance authority is considered. An agency may accept payment for an employee and/or the employee's spouse's travel from a non-Federal source when proper consideration is given to the conflict of interest criteria and a written authorization to accept payment is issued **in advance** of the travel event. Written authorization is accomplished by completing Form DI-2000. This form may be obtained from your servicing ethics counselor or downloaded from the Departmental Ethics Office's website at www.doi.gov/ethics and clicking on the "forms center" link. The authorized Approving Official documents on this form his or her determination that the non-Federal travel payment is:

- I. For travel relating to an employee's official duties (including attendance because the employee's presence at the meeting is necessary to permit participation in the meeting by another employee or because a spouse's presence at the meeting or similar function is in the interest of the agency) under an official travel authorization issued to the employee, and to an accompanying spouse when applicable;

II. For attendance at a meeting or similar function relating to the official duties of the employee; and

III. From a non-Federal source that is not disqualified on conflict of interest grounds.

Please Note – Payment may not be accepted under this authority for a meeting or other event required to carry out an agency’s statutory or regulatory functions. For example, a statutory or regulatory function essential to an agency’s mission, such as investigation, inspection, audit, site visit, or program evaluation.

In making this determination, the Authorized Approving Official shall be guided by all relevant considerations including, but not limited to:

1. The identity of the non-Federal source;
2. The purpose of the meeting or similar function;
3. The identity of other expected participants;
4. The nature and sensitivity of any matter pending at the agency affecting the interests of the non-Federal source;
5. The significance of the employee’s role in any such matter; and
6. The monetary value and character of the travel benefits offered by the non-Federal source.

Authorized Approving Official

For purposes of this policy, the term, “Authorized Approving Official” means that Department official who has been delegated the authority to approve the usual travel authorizations of the employee who will benefit from the non-Federal travel payment.

The following procedures must be satisfied before the employee begins his or her travel:

1. Each employee (and/or the accompanying spouse) must have an approved travel authorization. Each travel authorization must contain a statement indicating that: (a) all or part of the employee’s travel expenses will be paid for by (name of non-Federal source); (b) The authority to accept the travel related payment is 31 U.S.C. § 1353; and (c) and the planned travel situation complies with the ethics considerations for acceptance under 41 CFR § 304-1.
2. A form DI-2000 must also be completed and signed by the employee and approved by the Authorized Approving Official after receiving concurrence by a servicing ethics official.
3. Payments from a non-Federal source to cover the travel related expenses of an employee may be made in the form of a check or similar instrument made payable to the agency. Employees may also accept payments-in-kind (i.e., an airline ticket) on behalf of the Department and other payments when authorized to do so. Employees may not accept

cash.

A copy of each completed Form DI-2000 must be filed with the Bureau or Office Deputy Ethics Counselor. These forms are collected by the Departmental Ethics Office and used as part of the required reports to the U.S. Office of Government Ethics.

CHARITABLE FUNDRAISING - 5 C.F.R. § 2635.808

Federal employees are prohibited from fundraising on government time or on government property. Department employees are therefore restricted from any charitable fundraising in an official capacity unless the charitable organization is approved by the Office of Personnel Management (OPM). At this time, the only charitable organization sanctioned by OPM is the Combined Federal Campaign. The rules governing acceptable fundraising activities by Federal employees are contained in 5 CFR Part 950. Raffles, lotteries, bake sales, carnivals, athletic events, or other fundraising activities not specifically provided for by regulation are prohibited. The prohibition extends to activities such as Girl Scout cookie drives and sports tournament ladders where participants contribute money. *Non-federal partner entities are not similarly restricted from fundraising. These partners may fundraise on behalf of the partnership; bureaus may in turn accept such funds using bureau-specific gift acceptance authorities.*

An employee may engage in fundraising activities as a private citizen, on their own time and away from the workplace, provided that the employee does not use their official title or position to further the fundraising event. Even when acting as a private citizen, however, an employee may not solicit funds or other support from subordinates or from prohibited sources.

A limited exception exists for recognized employee organizations (such as the IDRA) to conduct fundraising activities to benefit their members and their families.

Finally, the fundraising restrictions pertain to the raising of funds, but not to campaigns for “in-kind” donations such as food, clothing and toys. Such charitable drives are permissible but employees and management should make every effort to limit the amount of official time, space and equipment that are used to avoid negative impact on the work of the office.

ENDORSEMENTS - 5 CFR § 2635.702(c)

Employees shall not use or permit the use of their Government positions, titles, or any associated authorities to endorse any product, service, or enterprise except:

1. In furtherance of statutory authority to promote products, services, or enterprises; or
2. As a result of documentation of compliance with agency requirements or standards or as the result of recognition for achievement given under an agency program of recognition for accomplishment in support of the agency’s mission.

Employees may endorse any outside program in their private capacities; however, the endorsement may not make reference to their official titles or positions within the Department.

Things *to do* when Establishing Private Sector Partnerships

Prepare a written partnership agreement which should contain the objectives of the partnership. It should state the policy on endorsements and advertising, and the responsibilities of each partner. The agreement should state the benefits the Department can expect from the partnership activities.

Have employees who are officers in partner organizations recuse (disqualify) themselves from any involvement as a Federal employee in particular matters in which the partner organization has a financial interest.

Authorize official time for employees to work on the joint effort for which the partnership was established.

Things *to avoid* when Establishing Private Sector Partnerships

Endorsing the product or services of the partner organization in your official capacity.

Soliciting funds or donations for your programs from partner organizations without specific statutory authority.

Create an organization to do what your own agency cannot do and then enter into a partnership with it.

Accept any compensation other than your Federal salary for official duty services you provide to partner organizations unless that compensation is from a Federal agency.

Use appropriated money to pay for lobbying activities to be performed by a partner.

Control or assume any measure of practical responsibility for the fund raising activities of private individuals or organizations who are partners.

MOUs for Official Participation as Officer or Board Member of Partnership Organization

Memorandum of Understanding
between the
U.S. Department of the Interior
and the
(Name of Outside Organization)
(Sample)

1. This document sets forth an agreement between the U.S. Department of the Interior (DOI) and the (organization name) concerning the service of (employee name) as an officer in the (organization name) as a part of his official government duties.

2. The primary beneficiary of (employee name)'s service as an (organization name) officer is intended to be the DOI. It is expected that the benefits to the DOI will include, but not be limited to the following:

(suggested benefits :)

- a. acquisition of state-of-the-art technical information about (name subjects).
- b. knowledge about organizational arrangements and relationships of organizations with which the DOI interacts, in order to enhance the working relationships between the DOI and such other organizations;
- c. improved understanding of current issues in the (name the field of endeavor) that concern DOI missions and operations;
- d. utilization of professional networks and channels to disseminate information relevant to the accomplishment of DOI missions; and
- e. utilization of other mechanisms to facilitate accomplishment of DOI missions, functions and processes, such as meetings, conferences, symposia, and publications.

3. In order to avoid the possibility of an actual or apparent use of public office for private gain, when official time is used for service as an officer in the (name of organization), the following principles will apply:

- a. Federal employees may not represent anyone other than the United States before an agency or court in connection with a particular matter in which the U.S. is a party or has a direct and substantial interest (18 U.S.C. § 205).

- b. Federal employees are required to refrain from working on particular matters as a Government employee when the employee is serving as an officer in a private organization and the organization in which he is serving has a financial interest in those Government matters (18 U.S.C. § 208).
- c. If a Federal employee's participation in a project undertaken in conjunction with a private organization was done as a part of his official duties, the employee is prohibited from sharing in any compensation by the dual compensation provisions of law (18 U.S.C. § 209).
- d. Federal employees are prohibited from using official time and Government equipment to instigate and generate lobbying activity on any issue pending before or of interest to the Congress (18 U.S.C. § 1913).
- e. Federal employees are prohibited from controlling or assuming any measure of practical responsibility for the fund raising activities of private individuals or organizations (E.O. 12731).

4. The relationship between the (organization name) and the DOI addressed in this document is intended to enhance service to the American public through more efficient applications of DOI programs. All actions should be directed toward attainment of that mutually beneficial goal.

5. The foregoing is not intended to impose on the (organization name) any obligations or restrictions, other than an obligation to respect the above described limitations on the activities and function of, and benefits which may be received by, nor does it constitute a representation or warranty by the (organization name) as to the benefits which the DOI will receive in fact from (employee name)'s service as an officer in the (organization name). Neither does the (organization name) assume any obligation to enquire into or enforce (employee name)'s compliance with paragraph 3c. above.

(Name of DOI Official)

Date:_____

(Name of Society Representative
and title)

Date:_____